



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,768	12/30/2003	Marc J. Commeville	31141-2	8216

30565 7590 12/16/2004

WOODARD, EMHARDT, MORIARTY, MCNETT & HENRY LLP
BANK ONE CENTER/TOWER
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS, IN 46204-5137

EXAMINER

HEWITT, JAMES M

ART UNIT	PAPER NUMBER
----------	--------------

3679

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,768

Applicant(s)

COMMEVILLE ET AL.

Examiner

James M Hewitt

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2003 and 10 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/10/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Drawings***

Figure 6 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.121(d)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to because in Figure 3, hole '22' is incorrectly shown to extend out of middle portion '16'. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to

Art Unit: 3679

show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The abstract of the disclosure is objected to because: in line 1, the phrase "Hose bib containment device includes" should be replaced with "A hose bib containment device having"; in line 5, "the" should be inserted before "containment"; in line 6, "the" should be inserted before "hose bib". Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: on page 8 line 19, the trademark symbol ® should appear after "Centrex" instead of after "BASF".

Appropriate correction is required.

Claim Objections

Claims 1-17 are objected to because of the following informalities:

In claim 1 line 5, the term "a junction circumference" is unclear.

Art Unit: 3679

In claim 13 line 1, the phrase "defined by" should be inserted after "is".
The specification should also be corrected to clarify that the hole is defined by the tube.

In claim 14 line 2, "the outward" should be "an outward".

In claim 15 line 5, "the front portion" lacks antecedent basis.

In claim 17 line 2, "the back portion" lacks antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 6-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hill (US 4,473,244).

With respect to claim 1, Hill discloses an apparatus comprising a back portion (as indicated by the lead line for numeral 12 in Figure 1) constructed to be secured to an exterior wall (8) of a building; a front portion (front face of the block 12) having a plurality of sides and a face; a middle portion (chamfered portion 24) having a plurality of sides, the middle portion being coupled to the back portion and the front portion at an angle such that a junction circumference is greater at the back portion than at the front portion; and wherein the front, middle, and back

Art Unit: 3679

portions have a hole (see Figures) for receiving a hose bib (32), said hole allowing the hose bib to be inserted into the face of the front portion, through the middle and back portions, and through an opening in the exterior wall to an interior area of the building having a water supply.

With respect to claim 2, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Refer to MPEP 2113.

With respect to claim 3, wherein the back, middle, and front portion are made of a molded plastic material (see col. 4 ll. 5-7).

With respect to claim 6, wherein the back portion has a plurality of screw holes (14) to aid in securing the back portion to the exterior wall.

With respect to claim 7, wherein the front and middle portions are constructed to allow mortar to be placed around the sides of the front portion and part of the middle portion so that a plurality of bricks can be installed flush with the face of the front portion. If the bricks used are not of a size to allow them to be installed flush, they of course could be cut to size. Note the bricks are not positively claimed here.

With respect to claim 8, wherein the middle portion is constructed to allow an air space to be left between the plurality of bricks and the exterior wall after installation of the bricks. Refer to the reasoning in the rejection of claim 7.

With respect to claim 9, wherein the angle of the middle portion allows a mortar joint to be sized so that a plurality of bricks can be installed flush with the face of the front portion. Refer to the reasoning in the rejection of claim 7.

Art Unit: 3679

With respect to claim 10, wherein the front portion is constructed to allow the hose bib to be secured to the front portion.

With respect to claim 11, wherein the front portion has a plurality of screw holes (16) to aid in securing the hose bib to the front portion.

With respect to claim 12, wherein the front portion is similar in size to a piece of brick. As the size of a piece of brick may vary, and "similar" is a relative term, Hill's front portion is considered to meet the limitation of the claim.

With respect to claim 13, wherein the hole is defined by a tube (20) that extends through the front, middle, and back portions to serve as a guide for inserting the hose bib into the opening of the exterior wall.

With respect to claim 14, wherein the tube extends outwardly from the back portion so that an outward part of the tube can be inserted into the opening of the exterior wall.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill (US 4,473,244).

Art Unit: 3679

Hill fails to teach that the color of the face of the front portion matches a brick color or a mortar color. Nevertheless, it would have been an obvious matter of design choice to color the face of the front portion, or even the entire block (12), a brick color, a mortar color, or any color for that matter, depending on the preference of the building owner.

Claims 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill (US 4,473,244) in view of Gilleran (US 6,543,186).

With respect to claim 15, Hill discloses a method comprising securing a hose bib containment device (10) to an exterior wall (8) of a building, said wall having an opening extending to an interior wall for access to a water supply; installing a hose bib (32) through a hole in the hose bib containment device and into the opening extending to the interior wall; securing the hose bib to the containment device; and connecting the hose bib to the water supply. Hill fails to teach the step of placing mortar and bricks around the hose bib containment device so that the bricks are substantially flush with a face of a front portion of the containment device. Gilleran teaches installing a sheet member against an exterior wall of a building from which a hose bib extends, and providing an exterior wall finish material to the sheet, and thereafter covering with stucco, wood siding, concrete, brick, or the like (see col. 2, ll. 46-53). Also note Applicant's admission in BACKGROUND OF THE INVENTION that bricking and mortaring around the hose bib is typical. In view of Gilleran's teaching, it would have been obvious to one having ordinary skill in the art at the time the invention

Art Unit: 3679

was made to brick and mortar about Hill's device and hose bib in order to impart a neat and consistent appearance for the building when brick is chosen as the material for the building's exterior. Note that it is most reasonable that the skilled artisan would make the bricks flush with front face of Hill's containment device.

With respect to claim 16, further comprising disconnecting the hose bib from the water supply; and removing the hose bib from the containment device without disturbing the mortar and bricks. After disconnecting and unscrewing the bib from the containment device, the bib is readily removed.

With respect to claim 17, wherein the containment device is secured by inserting a plurality of screws into a plurality of screw holes located in the back portion of the device and drilling the screw holes into the exterior wall. Refer to Figure 2.

With respect to claim 18, refer to the above rejection of claim 15.

With respect to claim 19, refer to the above rejection of claim 3.

With respect to claim 20, refer to the above rejection of claim 1.

With respect to claim 21, refer to the above rejection of claim 13.

Conclusion

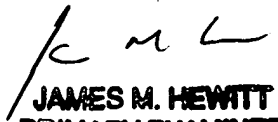
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3679

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M Hewitt whose telephone number is 703-305-0552. The examiner can normally be reached on M-F, 930am-600pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JAMES M. HEWITT
PRIMARY EXAMINER